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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other
similarly situated,

Plaintiffs,
v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-YGR-SVK

**JOINT CASE MANAGEMENT
STATEMENT**

Judge: Hon. Yvonne Gonzalez Rogers
Courtroom 1 – 4th Floor
Date: July 24, 2023
Time: 1:00 p.m.

Pursuant to the Court's March 3, 2023 Order (Dkt. 885), and in advance of the Further Case Management Conference set for Monday, July 24, 2023, at 1:00 p.m., Plaintiffs and Defendant Google LLC submit this Joint Case Management Statement. The previous Joint Case Management Statement is Dkt. 835.

1. JURISDICTION AND SERVICE

Google has been served and the Court has jurisdiction over this matter.

2. FACTS

The parties' prior Joint Case Management Conference Statements, class certification briefing, and summary judgment briefing include summaries of the principal issues in dispute.

3. LEGAL ISSUES

Google's pending summary judgment motion—which is fully briefed and was argued on May 12, 2023—summarizes the principal legal issues in dispute. Dkts. 907, 924, 933.

4. MOTIONS

Motions Decided Since the Last Joint Case Management Conference Statement (Dkt. 835)

The Court denied without prejudice Plaintiffs' request to clarify that all statutes of limitations remained tolled based on the Court's certification order. Dkt. 941. Magistrate Judge van Keulen granted in part Plaintiffs' motion for additional discovery sanctions and denied Google's administrative motion to deprecate the Incognito_window detection bit. Dkt. 898. Magistrate Judge van Keulen granted Google's motion for relief regarding preservation of certain mapping and linking tables Dkt. 899. The Court and Magistrate Judge van Keulen ruled on various motions to seal. Dkts. 839, 840, 841, 860, 878, 881, 900, 901, 902, 909, 910, 916, 917. The Court granted a motion for admission pro hac vice. Dkt. 838. And the Court and Magistrate Judge van Keulen granted motions to remove incorrectly filed documents. Dkt. 845, 875, 921, 938. The Ninth Circuit denied Plaintiffs' Rule 23(f) petition to appeal the Court's December 12, 2022 order granting in part and denying in part class certification. Dkt. 882.

Pending Motions

Google moved for summary judgment on March 21, 2023, Dkt. 907-3, Plaintiffs filed their response on April 12, 2023, Dkt. 924-3, and Google filed its reply on April 26, 2023, Dkt. 934. On

1 April 28, Plaintiffs moved to strike portions of Google’s reply in support of its motion for summary
 2 judgment. Dkt. 937. Google filed a response on May 1, Dkt. 943, and Plaintiffs filed their reply on
 3 May 3, Dkt. 946.

4 Plaintiffs filed a Rule 23(c)(4) motion for issue certification on March 14, 2023, Dkt. 894,
 5 Google filed its response on April 11, 2023, Dkt. 922, and Plaintiffs filed their reply on April 25,
 6 2023, Dkt. 932. The Court held a hearing on both Google’s summary judgment motion and
 7 Plaintiffs’ issue certification motion on May 12, 2023. Seven motions to seal remain outstanding.
 8 Dkts. 907, 924, 933, 936, 939, 942, 945.

9 Anticipated Motions

10 ***Plaintiffs’ Statement:***

11 Plaintiffs anticipate filing one or two *Daubert* motions and motions *in limine*.

12 ***Google’s Statement:***

13 Google anticipates filing motions *in limine* in advance of trial.

14 **5. AMENDMENT OF PLEADINGS**

15 Pursuant to stipulation of the parties, Judge Koh previously granted Plaintiffs’ request for
 16 leave to file their Second Amended Complaint. Dkt 138; Dkt 136-1 (“SAC”). The Court also granted
 17 Plaintiffs’ motion for leave to file a Third Amended Complaint, Dkt. 504; 395-2 (“TAC”), and
 18 Plaintiffs’ stipulated request to file their Fourth Amended Complaint, Dkt. 885; 886 (“FAC”).

19 **6. EVIDENCE PRESERVATION**

20 The parties reviewed the ESI Guidelines and conferred regarding evidence preservation. The
 21 parties previously agreed to and the Court entered a protective order (Dkt. 81) and an ESI order
 22 (Dkt. 80), and the ESI order was subsequently modified by the Court (Dkt. 91).

23 **7. DISCLOSURES**

24 The parties exchanged initial disclosures on September 8, 2020. Plaintiffs served amended
 25 disclosures on March 16, 2021 and second amended disclosures on March 4, 2022. Google served
 26 amended disclosures on February 21, 2022 and disclosed percipient witnesses with technical
 27 expertise who may testify at trial on April 14, 2022.

1 **8. DISCOVERY**

2 Fact discovery closed on March 4, 2022, and expert discovery closed on August 25, 2022.

3 ***Plaintiffs' Statement:*** On June 20, 2023, Plaintiffs served a Second Supplemental Expert
 4 Report of Jonathan Hochman, which addresses material that (i) only came to light during the most-
 5 recent sanctions proceedings in this case and (ii) was therefore not available to Mr. Hochman when
 6 he served his prior expert reports. Google has asked to depose Mr. Hochman on this Second
 7 Supplemental Report. Plaintiffs have offered to make Mr. Hochman available at a mutually
 8 agreeable time for a three-hour deposition limited to the new material addressed in his Second
 9 Supplemental Report.

10 ***Google's Statement:*** Google provided Plaintiffs the bulk of the "material" that Plaintiffs
 11 contend warrants a Second Supplemental Report from Mr. Hochman on June 14, 2022, more than a
 12 year before Plaintiffs served the report. Google provided Plaintiffs some additional "material" on
 13 November 30, 2022 and December 20, 2022, approximately six months before Plaintiffs served the
 14 report. Google intends to depose Mr. Hochman on the report, but does not agree to Plaintiffs'
 15 limitations and reserves its rights to seek other relief.

16 **9. CLASS ACTIONS**

17 On June 20, 2022, Plaintiffs moved for class certification. Dkt. 609. On December 12, 2022,
 18 the Court granted in part and denied in part Plaintiffs' motion for class certification. Dkt. 803. On
 19 December 23, 2022, Plaintiffs filed a Petition for Permission to Appeal under the Federal Rule of
 20 Civil Procedure 23(f). See Dkt. 812. The Ninth Circuit denied that petition on March 1, 2023. Dkt.
 21 882.

22 On March 14, 2023, Plaintiffs filed a motion for issue class certification. Dkt. 894. That
 23 motion was argued on May 12, 2023 and remains pending.

24 Counsel for the parties have reviewed the Procedural Guidance for Class Action Settlements.

25 **10. RELATED CASES**

26 This case is related to *Calhoun v. Google, LLC*. Dkt. 45.
 27
 28

1 **11. RELIEF**

2 ***Plaintiffs' Statement:*** The Fourth Amended Complaint outlines Plaintiffs' requested relief,
3 which includes without limitation (i) declaratory and injunctive relief on behalf of both classes; (ii)
4 monetary relief for the named Plaintiffs; and (iii) attorneys' fees and costs.

5 ***Google Statement:*** Plaintiffs' and class members' claims should be dismissed for the reasons
6 outlined in Google's motion for summary judgment and therefore neither Plaintiffs nor class
7 members are entitled to any relief, whether monetary or injunctive. To the extent any claims survive
8 summary judgment, the Court certified a class under Rule 23(b)(2), and thus the class's claims are
9 limited to injunctive relief. But no injunctive relief is appropriate here, and certainly the broad
10 injunctive relief that Plaintiffs seek (see Dkt. 609 at 24) is inappropriate. Google will address
11 Plaintiffs' and class members' requested injunctive relief at trial.

12 **12. SETTLEMENT AND ADR**

13 No settlement discussions have taken place. Pursuant to ADR Local Rule 3-5 and Civil Local
14 Rule 16-8, on August 19, 2020, the parties met and conferred regarding the available dispute
15 resolution options and filed their respective ADR Certifications.

16 Both parties are open to mediation.

17 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

18 The parties have not consented to have a magistrate judge conduct all further proceedings.

19 **14. OTHER REFERENCES**

20 Pursuant to Dkt. 885, on June 23, 2023, the parties filed a joint notice selecting the Honorable
21 Elizabeth D. Laporte (Ret.) to be appointed as the special master to resolve certain pre-trial
22 evidentiary disputes. Dkt. 959. Judge Laporte has requested that the order appointing her as Special
23 Master (i) describe the scope of her role and how fees will be allocated between the parties and (ii)
24 attach the fee schedules for her and her law clerk. The parties can submit a joint proposed order at
25 the Court's request. The parties do not otherwise believe this case is suitable for reference to binding
26 arbitration, any other special master, or the JPML.

1 **15. NARROWING OF ISSUES**

2 The parties will work together to see if there are issues that can be narrowed by agreement
3 or otherwise to expedite the presentation of evidence at trial.

4 **16. EXPEDITED TRIAL PROCEDURE**

5 The parties do not believe this case should be handled under the Expedited Trial Procedure
6 of General Order No. 64 Attachment A.

7 **17. SCHEDULING**

8 On March 2, 2023, the Court issued its Case Management and Pretrial Order, which set trial
9 for November 6, 2023. Dkt. 885. The parties now jointly propose the following case schedule, which
10 modifies the Court's previously ordered deadlines for exchanging of motions *in limine*, but
11 otherwise maintains all deadlines for filings with the Court. Actions in bold signify deadlines already
12 set by the Court in its Pretrial Order.

Action	Deadline
Plaintiffs send Google draft pretrial statement	August 17, 2023
Parties exchange witness lists	August 17, 2023
Parties exchange deposition designations and exhibits	August 24, 2023
Google returns pretrial statement	September 7, 2023
Deposition designation counters and objections and objections to exhibits	September 7, 2023
<i>Daubert</i> Motions	
Plaintiffs' Motions	August 24, 2023
Google's Oppositions	September 14, 2023
Plaintiffs' Reply	September 25, 2023
Motions <i>In Limine</i>	
Served (but not filed)	September 11, 2023
Oppositions Served (but not filed)	September 21, 2023
File Unresolved Motions	September 28, 2023
Joint Statement Confirming Parties' Review of and Compliance with the Court's Pretrial Setting Instructions	September 15, 2023
Deadline to Meet and Confer in Advance of Pretrial Conference	September 21, 2023

Compliance Deadline	September 22, 2023
Joint Pretrial Conference Statement Due	September 28, 2023
Trial Binders to Court	September 29, 2023
Pretrial Conference	October 13, 2023 at 9:00 a.m.
Trial	November 6, 2023 at 8:00 a.m.

18. TRIAL

Trial scheduled to begin on November 6, 2023. The parties agree that it is too soon to anticipate the number of trial days until the Court rules Google's summary judgment motion.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The parties filed their certificates of interested entities (Dkts. 14, 52) and have no updates.

20. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct of the Northern District of California.

21. OTHER MATTERS

None.

DATED: July 17, 2023

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DATED: July 17, 2023

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ATTESTATION

I, Andrew H. Schapiro, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: July 17, 2023

By: /s/ Andrew H. Schapiro
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